CLOSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

United States of America

v.

Esmir Leyva-De La Cruz

Citizen of Mexico

USM#: 70583-208 DOB: 1970

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed on or After November 1, 1987)

No. 08-15341-001M-SD

Lorna Spencer (AFPD)
Attorney for Defendant

ICE#: A98 946 416

THE DEFENDANT ENTERED A PLEA OF guilty on 2/28/2008 to Count THREE of the Complaint.

ACCORDINGLY, THE COURT HAS ADJUDICATED THAT THE DEFENDANT IS GUILTY OF THE FOLLOWING OFFENSE(S): violating Title 8, USC § 1325, Illegal Entry, a Petty offense, as charged in Count THREE of the Complaint.

IT IS THE JUDGMENT OF THE COURT THAT the defendant is hereby committed to the custody of the Bureau of Prisons for a term of SIXTY-FIVE (65) DAYS on Count THREE, with credit for time served.

IT IS FURTHER ORDERED that all remaining counts are dismissed on motion of the United States.

CRIMINAL MONETARY PENALTIES

The defendant shall pay to the Clerk the following total criminal monetary penalties:

SPECIAL ASSESSMENT: $Remitted **FINE:** $ **RESTITUTION:** $

If incarcerated, payment of criminal monetary penalties are due during imprisonment at a rate of not less than $25 per quarter and payment shall be made through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, Attention: Finance, 880 Front Street, San Diego, California 92101. Payments should be credited to the various monetary penalties imposed by the Court in the priority established under 18 U.S.C. § 3612(c). The total special assessment of $Remitted shall be paid pursuant to Title 18, United States Code, Section 3013 for Count THREE of the Complaint.

Any unpaid balance shall become a condition of supervision and shall be paid within prior to the expiration of supervision. Until all restitutions, fines, special assessments and costs are fully paid, the defendant shall immediately notify the Clerk, U.S. District Court, of any change in name and address. The Court hereby waives the imposition of interest and penalties on any unpaid balances.

IT IS FURTHER ORDERED that the Clerk of the Court deliver two certified copies of this judgment to the United States Marshal of this district.

The Court orders commitment to the custody of the Bureau of Prisons.
The defendant is remanded to the custody of the United States Marshal.

Date of Imposition of Sentence: **Thursday, February 28, 2008**

______________________________ Date 2/28/2008 ______________

JAY R. IRWIN, United States Magistrate Judge

RETURN

I have executed this Judgment as follows: ______________________________

Defendant delivered on __________ to ____________________ at ____________________, the institution designated by the Bureau of Prisons, with a certified copy of this judgment in a Criminal case.

______________________________ By: ______________________________

United States Marshal Deputy Marshal

08-15341-001M-SD -

UNITED STATES DISTRICT COURT **MAGISTRATE JUDGE'S MINUTES**
SOUTHERN DISTRICT OF CALIFORNIA - Yuma

DATE: 2/28/2008 CASE NUMBER: 08-15341-001M-SD

PLEA/SENTENCING MINUTES
USA vs. Esmir Leyva-De La Cruz

U.S. MAGISTRATE JUDGE: JAY R. IRWIN Judge #: 70BK
U.S. Attorney ______ INTERPRETER REQ'D Marcia Resler
LANGUAGE: Spanish
Attorney for Defendant Lorna Spencer (AFPD)

DEFENDANT: ☒ PRESENT ☐ NOT PRESENT ☐ RELEASED ☒ CUSTODY

DOA 2/27/08 ☒ Complaint Filed ☒ Appointment of counsel hearing held
☐ Financial Afdvt taken ☒ No Financial Afdvt taken ☐ Financial Afdvt sealed
☒ Initial Appearance

DETENTION HEARING: ☐ Held ☐ Cont'd ☐ Reset ☐ UA
Set for: before:
☐ Defendant ordered temporarily detained in the custody of the United States Marshal
☐ Defendant ordered released (see order setting cond of rel) ☐ Bail set at $______
☐ Defendant continued detained pending trial ☐ Flight Risk ☐ Danger

PLEA HEARING: ☒ Held ☐ Cont'd ☐ Reset
Set for: before:
☐ Consent to be tried by a Magistrate Judge signed ☐ Class A Misd ☐ Class B Misd ☐ Class C Misd
☐ Consent of Defendant ☐ Information filed ______ ☐ Complaint filed ______
☒ Defendant sworn and examined by the Court ☒ Plea of Guilty ☐ Not Guilty ☒ Entered to Counts THREE
☐ Defendant states true name to be ____. Further proceedings ORDERED in defendant's true name.
☒ Plea of Guilty entered as to Ct(s) THREE of the ☐ Information ☐ Indictment ☒ Complaint
☒ Court recommends/or accepts defendant's plea and finds plea to be freely and voluntarily given.
☐ Plea agreement: ☐ Lodged ☐ Filed ☐ Sealed
☐ Court does not accept defendant's plea of guilty because ______
☐ PSI ORDERED ☐ EXPEDITED ☒ PSI waived ☐ Time waived for passage of sentence
☐ Continued for sentence to __ before ______
☒ To be dismissed upon entry of the judgment, Ct(s) ONE / TWO
☒ ORDER vacate trial date/motion hearing/mtns moot
☐ ORDER defendant remain released pending sentence ☒ remanded to USM

SENTENCING:
☒ Defendant committed to Bureau of Prisons for a period of 65 days ☐ Probation/Supervised Release for ______
☒ Special Assessment $ REMITTED ☐ Fine $______ ☐ Restitution $______
Other: ______

RECORDED: CS
BY: Angela J. Tuohy, Deputy Clerk

United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
V.
Esmir LEYVA-De La Cruz
Citizen of Mexico
YOB: 1970
A98 946 416
Illegal Alien

CRIMINAL COMPLAINT

CASE NUMBER: 08-15341M-SD

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief.

COUNT I

That on or about August 15, 2007, Defendant Esmir LEYVA-De La Cruz was arrested and removed from the United States to Mexico through the port of Nogales, Arizona, in pursuance of law, and thereafter on or about February 27, 2008, Defendant was found in the United States near Andrade, California within the Southern District of California, the Secretary of the Department of Homeland Security not theretofore having consented to any reapplication by the Defendant for admission into the United States and after the Defendant had willfully and unlawfully returned and remained in the United States; in violation of Title 8, United States Code, Section 1326 (Felony).

COUNT II

That on or about February 27, 2008, within the Southern District of California, Defendant Esmir LEYVA-De La Cruz, an alien, did knowingly and willfully enter the United States at a time or place other than as designated by Immigration Officers and elude examination or inspection by Immigration Officers; in violation of Title 8, United States Code, Section 1325, in that the Defendant was previously convicted for violation of Title 8, United States Code, Section 1325, on March 5, 2007 (Felony).

COUNT III

That on or about February 27, 2008, within the Southern District of California, Defendant Esmir LEYVA-De La Cruz, an alien, did knowingly and willfully enter the United States at a time or place other than as designated by Immigration Officers; in violation of Title 8, United States Code, Section 1325 (Misdemeanor).

Continued on the attached sheet and made a part hereof. ☒ Yes ☐ No

Signature of Complainant
Jeff A. Gearhart
Senior Patrol Agent

Sworn to before me and subscribed in my presence,

February 28, 2008 at Yuma, Arizona
Date City and State

Jay R. Irwin, U.S. Magistrate
Name & Title of Judicial Officer

Signature of Judicial Officer

STATEMENT OF FACTUAL BASIS

Defendant: Esmir LEYVA-De La Cruz

Dependents: 1 Mexican

IMMIGRATION HISTORY: The Defendant was last removed through Nogales, Arizona on August 15, 2007 **and has been formally removed from the United States on a total of 3 occasions**.

CRIMINAL HISTORY:

DATE/LOCATION		**OFFENSE**	**DISPOSITION**
03/20/07	Yuma, AZ	Illegal Entry	45 Days Jail
05/25/06	Dekalb County, GA	Aggravated Assault FELONY	Not Prosecuted
08/05/07	Phoenix, AZ	Assault-Intent/ Reckless/Injure	10 Days Jail, 1 Year Probation
09/25/07	Phoenix, AZ	Aggravated Assault FELONY	WARRANT

Narrative: The Defendant, a citizen of Mexico and illegally within the United States, was encountered by Yuma Border Patrol agents near Andrade, California.

The Defendant was questioned as to his citizenship and immigration status. From that questioning agents determined that the Defendant is an undocumented national of Mexico and illegally in the United States.

The Defendant was transported to the Yuma station for processing. During processing, questioning and computer record checks the above criminal and immigration information was obtained as it relates to this Defendant.

The Defendant last entered the United States illegally without inspection near Andrade, California on February 27, 2008.

Charges:

8 USC§1326	(Felony)
8 USC§1325	(Felony)
8 USC§1325	(Misdemeanor)

Signature of Complainant

Sworn to before me and subscribed in my presence,

February 28, 2008

Date

Signature of Judicial Officer